



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1998

Mr. Lindsey Roberts
Assistant District Attorney
Dallas County
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR98-0471

Dear Mr. Roberts:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113169.

The Dallas County District Attorney's Office (the "district attorney") received a request for all information pertaining to the arrest, investigation, incarceration, and prosecution of two co-defendants. Although you have released some of the information to the requestor, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents.¹

Initially, we note that some of the submitted documents are court records. Documents filed with the court are public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

Second, we note that State Exhibits 14 and 20 contain medical records and emergency medical services records. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Access to medical records is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. As for emergency medical services records, section 773.091 of the Health and Safety Code provides:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” Health & Safety Code § 773.091(g). We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the district attorney must withhold the submitted EMS records under section 552.101 of the Government Code, except for any “information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.”

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

You explain that you have released to the requestor information that had been previously provided to the defendant's trial counsel, and that no section 552.103 interest exists with respect to such information. Thus, you are asserting section 552.103 only as to the remainder of the prosecution file.

After reviewing your arguments and the submitted material, we find that litigation is reasonably anticipated. We also conclude that the documents you have submitted relate to the anticipated litigation, and may be withheld. We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 113169

Enclosures: Submitted documents

cc: Mr. Joseph F. Zellmer
Attorney at Law
620 West Hickory St.
Denton, Texas 76201
(w/o enclosures)

²As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the information may be confidential by law. Therefore, if the district attorney receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the district attorney should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).